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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION

ZHONG ZHANG,
 JIE MA,

Plaintiffs,

v.

EMILIO T. GONZALEZ, Director of the U.S.
 Citizenship and Immigration Services;
 ALBERTO R. GONZALES, as Attorney General
 of the United States;
 MICHAEL CHERTOFF, in his Official Capacity,
 Secretary, United States Department of Homeland
 Security,

Defendants.

No. C 07-2754 JF

DEFENDANTS' CROSS-OPPOSITION TO
 PLAINTIFF'S MOTION FOR SUMMARY
 JUDGMENT

Plaintiffs Zhong Zhang and Jie Ma ask this Court to issue a writ of mandamus, compelling Defendants to make a determination on their applications for adjustment of status. They also ask the Court to find that Defendants have violated the Administrative Procedure Act ("APA"), and to grant relief under the Declaratory Judgment Act. Plaintiffs' claims must fail. Plaintiffs' applications remain pending because lead Plaintiff Zhang's name check is not yet complete. The facts are undisputed, and Defendants are entitled to judgment as a matter of law. Accordingly, Defendants respectfully oppose Plaintiffs' motion for summary judgment ask this Court to grant their motion for summary judgment.

1 Plaintiffs have not addressed Defendants' argument that the agency's delay is reasonable
 2 because there is no firm deadline and Plaintiff Zhang's name check is pending with the Federal
 3 Bureau of Investigation and Defendants have shown that they are doing everything to quicken the
 4 process. *Brower v. Evans*, 257 F.3d 1058, 1068 (9th Cir. 2001) (applying *Telecomm. Research*
 5 *and Action Ctr. v. FCC*, 750 F.2d 70, 80 (D.C. Cir. 1984) ("TRAC")). Plaintiff Ma's name check
 6 was completed, but she is a derivative applicant and her application cannot be adjudicated until her
 7 husband's is.

8 Plaintiffs do argue that while the Immigration and Nationality Act contains no timetable for
 9 adjudication of applications for adjustment of status, Congress sets a normative expectation and
 10 standard in "The Immigration Services and Infrastructure Improvements Act of 2000" of a
 11 reasonable processing time for an immigrant benefit application as no more than 180 days after
 12 initial application. *See* 8 USC § 1571. Firstly, this provision was passed prior to 9/11. Secondly,
 13 this provision is entitled to little weight as it is precatory and does not give Plaintiffs a right to
 14 adjudication of their applications in a particular time frame. *Cf. Chong Yia Yang v. Cal. Dep't*
 15 *Social Svcs.*, 183 F.3d 953 (9th Cir. 1999).

16 Again, a review of the six *TRAC* factors laid out in Defendants' motion for summary judgment
 17 show that Defendants' have not unreasonably delayed actions pertaining to Plaintiffs' adjustment
 18 of status applications. Additionally, Plaintiffs have failed to establish that mandamus is
 19 appropriate. For the foregoing reasons, the Government respectfully asks that the Court grant
 20 Defendants' motion for summary judgment as a matter of law and dismiss the action.

21 Dated: October 26, 2007

Respectfully submitted,

22 SCOTT N. SCHOOLS
 23 United States Attorney

24 /s/
 25 ILA C. DEISS
 26 Assistant United States Attorney
 27 Attorney for Defendants
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